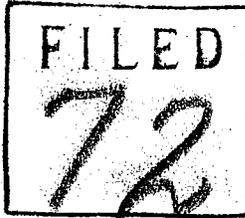


COUNTY AUDITOR:
COLLECTOR OF REVENUE:
LEVEE DISTRICTS:

Respective duties of county auditor and collector of revenue in class 2 counties in regard to levee district taxes.



April 18, 1955

Honorable Stephen R. Pratt
Prosecuting Attorney
Clay County
Liberty, Missouri

Attention: Mr. Gerald Kiser, Assistant Prosecuting Attorney

Dear Mr. Pratt:

Reference is made to your request for an official opinion of this department reading as follows:

"We wish to inquire about the respective duties of the County Auditor in Class 2 counties and the Collector of the Revenue of the county with reference to levee and drainage district taxes.

"Section 245.200 of the Revised Statutes for 1949 imposes the duty of the Collector of the Revenue to collect levee and drainage taxes and also provides that he give a separate bond to the Supervisors of the district. We think that means that he is ex-officio collector of the revenue for drainage and levee districts and that he handles such collections, ex-officio and not as a county officer.

"Section 55.190, Revised Statutes for 1949, provides that the collector shall make a daily report to the auditor of receipts and balances in his hands, and also states, 'that he shall make a daily report to the auditor of all other sums of money collected by him from any source whatsoever, and such report shall state from whom collected and on what account, which sums shall be charged by the auditor to the collector.'

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"Section 55.161, Paragraph 1 (Sub-paragraph 1) provides that the auditor shall also have the extra duty of auditing moneys and funds belonging to any levee district organized and operating in such county.

"It appears from the foregoing statutes that the collector is required to make a daily report to the auditor, and that the auditor is required to charge the collector with the several sums daily reported by the collector to the auditor.

"We understand there is some discussion about the meaning of the applicable statutes and we think that in view of the fact that heretofore the collector has acted as ex-officio collector for the drainage and levee districts, the whole matter should be clarified by official legal opinion.

"In other words, must the county collector report to the county auditor each item of collection on drainage and levee district taxes, when he is merely ex-officio collector of those districts to whom he is required to give a separate bond? If the collector of the revenue is merely ex-officio collector for the levee and drainage districts, to each of whom he gives a separate bond, why should the county auditor be charged with auditing his accounts when they are not in any sense county funds? If, upon auditing the accounts of the collector for the benefit of the drainage and levee districts, the county auditor finds some discrepancies, would the county auditor report it to the county, to the board of supervisors or to the bondsmen?

"In our opinion, the whole matter is indefinite and uncertain and we think an official opinion as to the county auditor's duties with respect to the

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matters hereinabove stated, is necessary for the county auditor's guidance."

Section 245.200, RSMo 1949, referred to in your letter of inquiry, reads as follows:

"1. It shall be the duty of the collector of revenue of each county in which lands or other property of any levee district organized under sections 245.010 to 245.280 are situate, to receive the levee tax book each year and he is hereby empowered and it shall be his duty to promptly and faithfully collect the tax therein set out and to exercise all due diligence in so doing. He is further directed and ordered to demand and collect such taxes at the same time that he demands and collects state and county taxes due on the same lands and other properties. Where any tract or part thereof has been divided and sold or transferred, the collector shall receive taxes on any part of any tract, piece or parcel of land or other property charged with such taxes and give his receipt accordingly. The above and foregoing levee tax book shall be the warrant and authority of the collector for making such demand and collection.

"2. The said collector shall make due return of all levee tax books each year to the secretary of the board of supervisors of the aforesaid levee district, and shall pay over and account for all moneys collected thereon each year to the treasurer of said district at the same time when he pays over state and county taxes. Said collector shall in said levee tax book, verify by affidavit his said return. The said secretary shall each year, within ten days after the return of said collector is delivered to him, prepare and certify to said collector a levee back tax book containing the list of lands and

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other property so returned by said collector as delinquent, deliver the same to him and take his receipt therefor, and said collector shall proceed to collect such delinquent levee taxes and demand payment therefor in the same manner as herein provided for the collection of current levee taxes.

"3. Before receiving the aforesaid levee tax book the collector of each county in which lands or other property of the levee district are located, shall execute to the board of supervisors of the district a bond with at least two good and sufficient sureties in a sum that is double the probable amount of any annual installment of said tax to be collected by him during any one year, conditioned that said collector shall pay over and account for all taxes so collected by him according to law. Said bond after approval by said board of supervisors shall be deposited with the secretary of the board of supervisors, who shall be custodian thereof and who shall produce same for inspection and use as evidence whenever and wherever lawfully requested to do."

It is to be observed that under the quoted statute the duty of collecting levee district taxes has been directly imposed upon the collector of revenue of such county. It further provides for a bond conditioned upon the paying over and accounting for all taxes of the levee district so collected. This statute first appeared in the Laws of 1913, page 290, and has been unamended to this date.

Section 55.190, RSMo 1949, reads as follows:

"It shall be the duty of the county collector of revenue of each of such counties to make a daily report to the auditor of receipts and balance in his hands, and where deposited, and deliver to the auditor each day a deposit slip showing the day's deposit. The collector shall, upon receiving taxes, give duplicate numbered tax

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receipts, which the taxpayer shall take to the auditor to be countersigned by him, one of which the auditor shall retain, and charge the amount thereof to the collector. The collector shall also make a daily report to the auditor of all other sums of money collected by him from any source whatsoever, and in such report shall state from whom collected, and on what account, which sums shall be charged by the auditor to the collector. The collector shall, upon turning money over to the county treasurer, take duplicate receipts therefor and file same immediately with the county auditor."

Section 55.161, MoRS, Cum. Supp., 1953, reads, in part, as follows:

"In addition to all other duties imposed upon the county auditor in counties of the second class he shall have the following duties:

(1) He shall audit, examine and adjust all accounts of county officials and courts operating in such counties where there is an accumulation of moneys, taxes, fees, fines and miscellaneous public funds received from any and all sources by county officials and courts operating in such counties, and which are accumulated and intended for public purposes other than the general administrative functions of the county, provided that such extra duty of accounting is to be performed in the same manner as is now by statute prescribed for the general county administrative business. He shall also have the extra duty of auditing moneys and funds belonging to any levee district organized and operating in such county, also moneys to be disbursed to school districts organized and operating in such county, also moneys to be disbursed in the county for library, hospital, recreation, public health and civil defense purposes;

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The latter two statutes form a part of Chapter 55 relating to the office of county auditor. The confusion which apparently has arisen no doubt stems from the provisions of Section 55.161, RSMo 1949, quoted supra, by virtue of the incorporation therein of the last two sentences which we have underscored.

Under the plain language embodied in Section 55.190, RSMo 1949 quoted supra, the collector of revenue is required to make the daily report to the county auditor in the form therein mentioned. The language relating to the duties of the collector of revenue is definite and unambiguous and, therefore, no occasion arises for its construction. In the circumstances the rule declared by the Supreme Court in the case of Steggall v. Morris, 258 S. W. (2d) 577, from which we quote, l. c. 582, we believe to be applicable:

"In State ex inf. Rice ex rel. Allman v. Hawk, 360 Mo. 490, 228 S. W. 2d 735, loc. cit. 739 (8, 9), this court stated the rule thus: 'The language of the statute is clear and unambiguous, and we have no right to read into it an intent which is contrary to the legislative intent made evident by the phraseology employed.'"

Your further question, relating to whom reports of discrepancies found as a result of such audit should be reported, is answered, we believe, by the provisions of Section 245.200. Under that statute, as mentioned supra, the bond of the collector of revenue is conditioned upon the payment and accounting for, of all levee taxes. The same statute requires that such bond name the board of supervisors of such district as obligor. Therefore, any discrepancy should be reported to that body in order that appropriate legal action might be instituted against the defaulting officers and the sureties on his bond for the recovery of funds properly due the levee district.

CONCLUSION

In the premises, we are of the opinion that a collector of revenue in a county of the second class is required, with respect to taxes collected on behalf of such levee district, to report in detail to the county auditor of such county such collections.

We are further of the opinion that it is the duty of the county auditor in counties of the second class to audit the

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accounts of the collector of revenue of such county and of the treasurer of levee districts located therein for the purpose of ascertaining whether proper settlement has been made for all funds due such levee districts.

We are further of the opinion that in the event of discrepancies being found in such accounts, report thereof should be made by the county auditor to the board of supervisors of the levee district affected.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Very truly yours,

JOHN M. DALTON
Attorney General

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